INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	1
Statute, resolution, and rule involved	2
Statement	2
Argument	9
Conclusion	20

CITATIONS

Cases:

Barenblatt v. *United States*, 360 U.S. 109 ..... 10, 11, 13, 14, 15, 16, 17, 19, 20

Barsky v. *United States*, 167 F. 2d 241, certiorari denied, 334 U.S. 843 15

Braden v. *United States*, No. 54, this Term, certiorari granted, 362 U.S. 960 19

Bryant v. *Zimmerman*, 278 U.S. 63 16

Giordenello v. *United States*, 357 U.S. 480 12

McPhaul v. *United States*, No. 33, this Term, certiorari granted, 362 U.S. 917 19

NAACP v. *Alabama*, 357 U.S. 449 16

Reed v. *County Commissioners*, 277 U.S. 376 10

Russell v. *United States*, No. 239, this Term 19

Sacher v. *United States*, 252 F. 2d 828, reversed, 356 U.S. 576 9

Watkins v. *United States*, 354 U.S. 178 ..... 9, 17

Wilkinson v. *United States*, No. 37, this Term, certiorari granted, 362 U.S. 926 19

Constitution and statute:

Constitution of the United States:

First Amendment 5, 12, 13, 15, 16, 20

Fifth Amendment 5

2 U.S.C. 192 2

862774—60——1

Miscellaneous: Page
Federal Rules of Criminal Procedure, Rule 7(c)..... 2
Hearings before the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Committee on the Judiciary, United States Senate, 84th Cong., 2d Sess., January 4, 5, 6, 1956, entitled *Strategy and Tactics of World Communism (Communist Activity in New York)*..... 3
S. Rept. 1385, 84th Cong., 2d Sess..... 11
S. Res. 174, 84th Cong., 2d Sess..... 11
S. Res. 7, 82d Cong., 1st Sess..... 11
S. Res. 366, 81st Cong., 2d Sess..... 2, 9, 10, 17

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 300

ALDEN WHITMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The oral opinion of the district court is not reported. The opinion of the court of appeals (Pet. App. A, pp. 1a–3a) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on July 7, 1960. The petition for a writ of certiorari was filed on August 5, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether Senate Resolution 366, 81st Congress, validly authorized the hearing and the questions which petitioner refused to answer.

2. Whether a witness, who was admittedly a member of the Communist Party during the period 1935 to 1948, may refuse on the basis of the First Amendment to answer a question as to his membership in a particular Party cell, as well as other questions as to his own activities and the activities of other Party members.

3. Whether the questions which petitioner refused to answer related to events that were too remote in point of time to be pertinent.

4. Whether the Subcommittee failed to apprise petitioner of the source of its authority and the pertinency of the questions.

5. Whether an indictment charging contempt of Congress must specify the subject under inquiry and the relationship of the questions to that subject.

STATUTE, RESOLUTION, AND RULE INVOLVED

2 U.S.C. 192, Senate Resolution 366, 81st Cong., 2d Sess., and Rule 7(c) of the Federal Rules of Criminal Procedure are set forth in Appendix B to the petition at pp. 4a–6a.

STATEMENT

The petitioner was charged in a nineteen-count indictment (J.A. 4–6), returned in the District Court for the District of Columbia, with having refused, in violation of 2 U.S.C. 192, to answer nineteen questions asked of him by the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Senate Committee on the Judiciary. Petitioner was found guilty by the court on all counts (J.A. 54–55) and was sentenced to serve six months' imprisonment, which was

suspended, and to pay a fine of $500 (J.A. 62–63). The judgment of the trial court was affirmed by the court of appeals (Pet. App. 1a–3a).

The pertinent facts may be summarized as follows:

On June 28 and 29, 1955, in the course of the Subcommittee's continuing investigation into "the strategy and tactics of world communism" (J.A. 37), Winston Burdett, a newspaperman and broadcaster, testified that he had been recruited into the Communist Party and that thereafter Party leaders had induced him to become a foreign correspondent for a major American newspaper and to use that position as a cover for military espionage for the Soviet Union (Tr. 173–174). On January 4, 1956, at the opening of the hearings at which petitioner appeared,[1] the Chairman of the Subcommittee announced that the present hearings "stem from sessions of this subcommittee held on June 28 and 29, 1955, in which we heard the testimony of Mr. Winston Mansfield Burdett, a newspaperman and broadcaster" (Gov. Ex. 8, p. 1587).[2] The Chairman pointed out that "among the persons involved in this investigation have been many who were or are members of the press, and that the international Communist conspiracy has as one of its primary aims the influencing of public opinion, thus car-

[1] At this same hearing, Robert Shelton, the petitioner in No. 946, this Term, pending on petition for certiorari, also refused to answer certain questions.

[2] Government Exhibit 8 is part 17 of the printed transcript of the Hearings before the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Committee on the Judiciary, United States Senate, 84th Cong., 2d Sess., January 4, 5, 6, 1956, entitled *Strategy and Tactics of World Communism (Communist Activity in New York)*.

rying on its psychological warfare against the United States and its institutions from inside by methods of penetration" (*ibid.*). Thereupon, Senator Hennings asked that it be "generally known and understood that this is not an attack upon any one newspaper, upon any group of newspapers as such, but an effort on the part of this committee to show such participation and such attempt as may be disclosed on the part of the Communist Party in the United States or elsewhere, indeed, to influence or to subvert the American press" (*id.*, p. 1588). The Chairman agreed with this statement and then continued (*ibid.*):

> We are not singling out any newspaper and not investigating any newspaper or any group of newspapers. We are simply investigating communism wherever we find it, and I think that when this series of hearings is over that no one can say that any newspaper or any employees of any one newspaper has been singled out.

Petitioner testified two days later, on January 6. At the date of the issuance of his subpoena, on November 23, 1955, the Subcommittee had information to the effect that he had been active in the Communist Party in Connecticut in the mid-thirties; that he had been an official of the American Committee for the Protection of the Foreign Born, which organization had been cited by the Attorney General as subversive; that he had been an executive secretary of the New York Committee for the Protection of the Foreign Born, a related organization; that he had been connected with a magazine called "Science and Society", which was part of a scheme to recruit teachers from American universities and colleges into the Commu-

nist Party; and that he had been employed by TASS, the Soviet news agency, which the Subcommittee believed to be a cover for Soviet espionage (J.A. 9, 10–12).

Petitioner, a copyreader for the New York Times (Gov. Ex. 8, pp. 1728, 1729), testified that he was a member of the Communist Party from 1935 to approximately 1949, and that he belonged to Party cells in Bridgeport, Connecticut, where he joined the Party; Buffalo, New York; and New York City (*id.*, pp. 1730–1733, 1739, 1744–1745). When, however, he was asked to name the members of a cell to which he belonged in New York City, he declined to do so on the grounds that his private affairs, beliefs, and associations were not proper subjects for investigation; that their pertinence to any valid legislative purpose was in doubt; and that it was doubtful whether Congress had the right to investigate the press (*id.*, p. 1735). He disclaimed any reliance on the Fifth Amendment, relying instead on the First Amendment and the doctrine of separation of powers (*id.*, pp. 1734–1735).

Petitioner was told by the Chairman that the question was asked because the Subcommittee was investigating a Communist cell which it had reason to believe was active in New York City (*id.*, p. 1737). Petitioner was then directed to answer the question (*id.*, p. 1739). He again refused (*id.*, p. 1739), and this refusal constitutes the basis for count 1 of the indictment (J.A. 4).

On the basis of his original objections to the inquiry, petitioner declined to answer the questions

upon which the remaining counts in the indictment are predicated (J.A. 4–6).[3] He refused to state whether the cell was located at one of the major newspapers, on what newspaper he worked at the time he was a member of the cell, whether during all or part of the period from January 1943 to June 30, 1951, he was a member of a Communist cell composed of employees of the New York Herald Tribune where he was then employed, who were the members of the cell at the Herald Tribune, and whether any of the members of the cell were currently employed by the Tribune (Counts 3–7) (Gov. Ex. 8, pp. 1740–1744).

Petitioner testified that his first employment in New York in 1938 was with the National Committee for People's Rights (*id.*, pp. 1732, 1743). He was advised by the Subcommittee that in 1942 this organization had been cited by the Attorney General "as a Communist organization, substantially equivalent to the International Labor Defense, legal arm of the Communist Party" (*id.*, p. 1743). After working for this organization for two or three months, he did research on a book, but he refused to give the name of the book or to state for whom he did the research (Count 9) (*id.*, pp. 1745–1746). He also refused to state whether the book was published by a Communist publishing house or whether the person for whom he worked was known to him to be a Communist (Counts 10, 11) (*id.*, p. 1746).

Petitioner testified that for a period of eight weeks he was employed by the North American Committee to

[3] The only exception to his stated grounds for refusal was Count 8 (see *infra*, p. 9).

Aid the Spanish Democracy (*id.*, pp. 1746–1748), but he refused to state whether there were any persons in that organization known to him to be Communists (Count 12) (*id.*, p. 1747). He was then advised by the Subcommittee that in 1949 the North American Committee had been cited by the Attorney General as a Communist organization and by the House Committee on Un-American Activities as a Communist front (*ibid.*). He was further informed that it had received funds from the Communist Party of Massachusetts and from the International Workers Order and that its literature had been sold in Communist bookstores (*ibid.*). Petitioner persisted in his refusal to answer and further declined to name the person who paid him for working for that organization (Count 13) (*id.*, p. 1748).

Petitioner testified that he also worked for about two months as a press agent for Films for Democracy (*id.*, pp. 1748–49). He was told by counsel for the Subcommittee that, in March 1944, Films for Democracy had been cited as a Communist-front organization; that the Cinema Bureau in Moscow had laid down directives in 1939 concerning the building up of audiences for the purpose of agitating against films opposed to the current Communist Party line and supporting those that favored the line; and that, pursuant to that directive, Film Audiences, a Communist front, merged with Films for Democracy to form a new Communist front, Film Audiences for Democracy (*id.*, p. 1749). Petitioner declined to state whether there were any persons connected with Films for Democracy known to him to be Communists or

to disclose who paid him for his work (Counts 14, 15) (*id.*, pp. 1748–49).

After he left Films for Democracy, petitioner worked for several months for Veterans of Democracy as press agent and researcher for one of its officers who was speaking once a week over radio station WQXR (*id.*, pp. 1749–1750). He refused to answer whether any persons connected with that organization were known to him to be Communists or to name the officer for whom he worked (Counts 16, 17) (*id.*, p. 1750).

Petitioner testified that he had worked successively from the fall of 1939 to December 1941 for the Russian news agency, TASS, for the New York Peace Committee, and for the American Committee for the Protection of the Foreign Born (*id.*, pp. 1751–1752). He was told by the Subcommittee that the American Committee for the Protection of the Foreign Born had been cited by the Attorney General as subversive and Communist and that it was known as "one of the oldest auxiliaries of the Communist Party in the United States" (*id.*, pp. 1729, 1752). He declined to state whether any persons in the New York Peace Committee or the American Committee for the Protection of the Foreign Born were known to him to be Communists (Counts 18, 19) (*id.*, p. 1752).

From December 1941 to January 1943, petitioner worked for the Buffalo Evening News (*id.*, pp. 1728, 1753). He testified that he joined a Communist unit in Buffalo, but he refused to state who were the members of that unit (Count 2) (*id.*, pp. 1739, 1753). In January 1943, he returned to New York where he became a copy reader for the New York Herald Trib-

une (*id.*, p. 1753). He remained with the Tribune until the end of June 1951, when he began his present employment with the New York Times (*id.*, p. 1574).

Petitioner testified that he left the Communist Party in 1948 (*id.*, pp. 1730–1731, 1745). He could not recall writing a formal resignation but at about that time he stopped going to meetings and paying dues (*id.*, p. 1745). On the basis of privileged communications between himself and his wife, he declined to state whether he told anyone that he was quitting the Party (Count 8) (*ibid.*).

ARGUMENT

1. Petitioner argues (Pet. 14–17) that Congress did not authorize the Subcommittee to conduct the hearing or to ask the questions which he refused to answer. Senate Resolution 366, 81st Cong., 2d Sess. (see Pet. App. B, p. 5a), gives the Subcommittee the authority to investigate "the administration, operation, and enforcement of the Internal Security Act of 1950" and of "other laws relating to espionage, sabotage, and the protection of the internal security," and "the extent, nature, and effects of subversive activities in the United States," including Communist espionage, sabotage, and infiltration. We submit that this resolution adequately authorizes the investigation of Communist subversive activity in the press which is involved here. *Sacher* v. *United States*, 252 F. 2d 828, 832 (C.A. D.C.), reversed on other grounds, 356 U.S. 576.[4]

[4] Unlike the authorizing resolution of the House Committee on Un-American Activities criticized as vague and ambiguous in *Watkins* v. *United States*, 354 U.S. 178, 201–204, 209, S. Res. 366 uses no such terms as "un-American" or the "principle of

In any event, this Court held in *Barenblatt* v. *United States*, 360 U.S. 109, 117, that "[j]ust as legislation is often given meaning by the gloss of legislative reports, administrative interpretation, and long usage, so the proper meaning of an authorization to a congressional committee is not to be derived alone from its abstract terms unrelated to the definite content furnished by the course of congressional actions." On the basis of such a gloss, the Court upheld the authorizing resolution of the House Committee on Un-American Activities. The history of the Internal Security Subcommittee is equally persuasive that Congress authorized that Subcommittee to investigate Communist activity generally, including activity in so important an area as the press. The Subcommittee, founded in 1950 (S. Res. 366, 81st Cong., 2d Sess.), has from its beginning devoted a great proportion of its energies to the investigation of Communist activities including infiltration into the government and key industries, such as television, radio and the press; and it has held numerous hearings on legislative proposals to curb such activi-

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the form of government as guaranteed by our Constitution"; nor does its language suggest that the authority of the Subcommittee is limited to some particular aspect of Communist activity such as propaganda. Cf. 354 U.S. at 202. The term "subversive activities" in the third clause of S. Res. 366 is given content by the "including" phrase since "[t]he meaning of the general language [in resolutions] is to be confined to acts belonging to the same general class as those specifically authorized." *Reed* v. *County Commissioners*, 277 U.S. 376, 389. And even if clause 3 of the resolution might possibly be considered as vague, if viewed alone, the first two clauses leave no real doubt of the area of authority conferred by the resolution on the Subcommittee.

ties. Cf. 360 U.S. at 118–119. The Senate has continued the life of the Subcommittee at the start of each new Congress (*e.g.*, S. Res. 7, 82d Cong., 1st Sess.), has never narrowed its powers, and has continually supported it with substantial appropriations. Cf. 360 U.S. at 119–120. Indeed, in 1956 (shortly after the hearing involved here), the Senate extended the life of the Subcommittee with the same jurisdiction and appropriated a large sum (S. Res. 174, 84th Cong., 2d Sess.) on the basis of the Subcommittee's 1955 Report. See S. Rept. 1385, 84th Cong., 2d Sess. That report described Winston Burdett's testimony concerning Communist infiltration of the press and stated that subsequent hearings confirmed his testimony and provided new information on such infiltration into various New York newspapers. *Id.*, p. 4. The report then said that "[t]he subcommittee's investigation, which was set in motion by Mr. Burdett's revelations, had not been completed at the end of 1955" (*ibid.*).

Petitioner argues, however, that it was never made clear that the topic of Communist infiltration into the press was the topic under inquiry.[5] In fact, however, at the outset of these hearings on January 4,

[5] Petitioner suggests (Pet. 15) that evidence that the topic under inquiry was Communism in general is inconsistent with evidence that the topic was Communist infiltration of the press. This contention has no merit. The usual practice of the Subcommittee in its continuing investigation of Communist activities throughout the United States was to use separate hearings to concentrate on various aspects of the larger topic. Thus, the subject under inquiry at this hearing was *both* Communist infiltration of the press and Communist activity in general, but the former was the more precise and specific subject.

1956, the Chairman stated that the hearing resulted from the earlier testimony of Winston Burdett. Then, both the Chairman and Senator Hennings emphasized that the investigation was into Communist infiltration of the press (see the Statement, *supra*, pp. 3–4). On January 6, the day petitioner testified, after Senator Hennings had made a similar statement (Gov. Ex. 8, p. 1718), the Subcommittee heard a series of seven witnesses all of whom were questioned about this subject. And petitioner himself showed full awareness that Communist infiltration of the press was the subject of the hearing (see *infra*, pp. 17–19).*

2. Petitioner claims (Pet. 11–14) that his rights under the First Amendment have been violated by being compelled to disclose the names of associates in various newspaper and comparable organizations.

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*Petitioner also contends (Pet. 16) that the government failed to establish that the Subcommittee had authorized this particular hearing. It is true that the government did not introduce proof as to this precise issue since petitioner did not contest or raise this point in the district court (or the court of appeals). See *Giordenello* v. *United States*, 357 U.S. 480, 487–488. In any event, the authorization is clear. Under Rule 1 of the Subcommittee's rules, a major investigation must be voted by a majority of the Subcommittee's members. Since seven of the nine members were present at the start of this hearing into infiltration of the press (Gov. Ex. 8, p. 1587) and none objected to it, they undoubtedly considered the investigation as approved. Senator Hennings' statement, on which petitioner relies (Pet. 16–17), concerns (when read in context, Gov. Ex. 8, p. 1588) whether the investigation was an attack on one or more newspapers or was an investigation of Communist infiltration in the press. Senator Hennings claimed that the latter was the correct purpose of the investigation, and the Chairman agreed.

However, in *Barenblatt* v. *United States, supra,* 360 U.S. 109, the Court upheld a congressional investigation of Communist activity in the field of education, an area which, like the press, is generally protected by the First Amendment. Since, as in *Barenblatt,* the Subcommittee had considerable evidence of Communist activity in the area under investigation—and since Communist activity in the press is a matter of grave and proper public concern—"the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and * * * therefore the provisions of the First Amendment have not been offended." 360 U.S. at 134.[7]

This case is more precisely like *Barenblatt* than petitioner admits. He argues that *Barenblatt* concerned only questions as to the witness' own participation in Communist activities and not the identity of other individuals engaged in such activities. But in that case this Court expressly upheld the constitutional propriety of the question: "Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?" 360 U.S. at 114, 126 (note 25). This question is substantially the same as the one which is the subject of Count 5 of the indictment involved here: "During all or part of that period, sir, were you a member of the Communist unit or

[7] Petitioner assumes as to the First Amendment issue, throughout his petition, that his past political activities were lawful. Whether or not that is true, "[t]he strict requirements of a prosecution under the Smith Act * * * are not the measure of the permissible scope of a congressional investigation into 'overthrow,' for of necessity the investigatory process must proceed step by step." *Barenblatt,* 360 U.S. at 130.

cell composed of employees of the New York Herald Tribune?" (J. A. 4).[5] And since petitioner was given a general sentence on all counts, his conviction must be sustained if any one count of the indictment is valid. *Barenblatt*, 360 U.S. at 126 (note 25), and 115.

Moreover, while this Court in *Barenblatt* did not find it necessary to consider the questions involved there relating to the disclosure of the witness' associates in Communist activities (360 U.S. at 114–115), we submit that the scope of the decision covers such questions, particularly when the congressional committee has laid the basis for such an inquiry by showing the witness' participation in Communist activities and his knowledge of the organization or persons involved. The "ultimate issue" involved in *Barenblatt* was "whether petitioner could properly be convicted of contempt for refusing to answer questions relating to his participation in or knowledge of alleged Communist Party activities at educational institutions in this country * * *." 360 U.S. at 115. Certainly, questions of an admitted Party member concerning

[5] At least five other questions clearly fitted within the scope of the *Barenblatt* decision because, on their face, they related to petitioner's own "participation in or knowledge of alleged Communist Party activities." 360 U.S. 115. The questions as to whether the New York newspaper with a Communist cell (to which the petitioner had admitted he belonged) was a major paper (Count 3), the name of that newspaper (Count 4), whether petitioner told anyone whether he was quitting the Communist Party (Count 8), whether a book he wrote was published by a Communist publishing house (Count 10), and whether the person for whom he did research was known by him to be a Communist (Count 11) (J.A. 4–5), asked for answers concerning his own participation and knowledge, and did not require disclosure of the names of any associates.

associates in Communist organizations were within his "knowledge of alleged Communist Party activities." Thus, the questions as to the members of the Party cell in New York (Count 1), the members of the Buffalo cell (Count 4), the members of a cell at the New York Herald Tribune (Count 6),* and whether any members of the latter cell are still employed by the Tribune (Count 7), were constitutionally valid. Similarly, the Subcommittee could validly ask petitioner, an admitted Party member, about whether fellow members of various organizations to which petitioner admittedly belonged were *known by him* to be Communists (J.A. 5–6), in view of the Subcommittee's information that these organizations were Communist infiltrated. As the court below stated in *Barsky* v. *United States*, 167 F. 2d 241, 246 (C.A. D.C.), certiorari denied, 334 U.S. 843: "If Congress has power to inquire into the subjects of Communism and the Communist Party, it has power to identify the individuals who believe in Communism and those who belong to the Party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. Personnel is part of the subject."

Indeed, the decision in *Barenblatt* goes beyond what is needed to sustain the questions concerning petitioner's associates. Petitioner saw fit to testify as to his own activities and seeks to invoke the First Amendment only in favor of testimony as to third parties. Under this Court's ruling in *Barenblatt*, it is clear that he could not in these circumstances prop-

* Perhaps this question, in view of petitioner's testimony, duplicates the question involved in Count 1.

erly invoke the First Amendment as to his own past and present membership in the Party. *A fortiori*, he cannot invoke the privilege either for the benefit of others or to support his claim against compulsory disclosure of the names of others."

3. Petitioner likewise claims (Pet. 21–22) that the questions related to events too remote in time to be pertinent.[11] But in order to determine, and particularly to understand, the present and future activities of the Communist Party, the Subcommittee must of necessity inquire some distance into the past. The questions petitioner refused to answer concerned Communist activities from 1935 up to the time of the inquiry in 1956. At the very least, the questions in Counts 3 through 6, which related to petitioner's membership and associates in a Party cell in the New York Herald Tribune between 1943 and 1951, and that in Count 7 as to whether any members of that cell were still employed by the Tribune in 1956, were

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[10] Petitioner's reliance (Pet. 12) on *NAACP* v. *Alabama*, 357 U.S. 449, is inapposite. There, the state was attempting to compel disclosure of the membership of an association engaged in lawful activities for lawful ends—and no adequate reason for disclosure was presented. The Court distinguished *Bryant* v. *Zimmerman*, 278 U.S. 63, on the ground that the organization involved in that case, the Ku Klux Klan, engaged in unlawful activity. 357 U.S. at 465. Similarly, this Court "has recognized the close nexus between the Communist Party and violent overthrow of government." *Barenblatt*, 360 U.S. at 128.

[11] The suggestion (Pet. 21–22) that the court of appeals applied an erroneous standard of pertinency is insubstantial. The court's use of the phrases "not without relevance" and "not so distant to be irrelevant" (Pet. App. A, p. 3a) mean nothing different than that the questions were relevant.

plainly not remote.[12] In *Barenblatt*, this Court held (360 U.S. at 125) that the "pertinency" of "questions as to [the witness'] own Communist Party affiliations," including membership in a Communist Club between 1947 and 1950 (*id.*, p. 114), "was clear beyond doubt."

4. Petitioner also contends (Pet. 18-20) that the Subcommittee failed to apprise him of the source of its authority or the pertinency of the questions. Neither point has merit.

(*a*) As for the claim that he was not apprised of the authority of the Subcommittee, petitioner, while claiming that Senate Resolution 366 did not in fact authorize the inquiry, did not raise below the distinct issue whether the Subcommittee told him that its authority was based on this resolution. Moreover, *Watkins* and *Barenblatt* require only that congressional committees apprise witnesses, upon proper objection, of the subject under inquiry and the pertinency of the questions. There appears no need to require committees to give a witness information as to their authority since the authorizing resolution is a public document which is readily available.

(*b*) The transcript of the hearings makes clear that petitioner was apprised—and was aware—of the subject under inquiry. At the start of the hearing, a few minutes before petitioner testified (he was the

[12] As stated above, petitioner's conviction must be sustained as long as any one of the counts is upheld.

second witness on January 6), Senator Hennings stated (Gov. Ex. 8, p. 1718):

> I think that no one will quarrel with nor take issue with the fact that this committee has the right to inquire into all efforts or, indeed, all consummations of efforts of the Communist Party to infiltrate newspapers or other media of communication. * * *

Thereafter, in his own statement read to the Subcommittee, petitioner claimed that the Subcommittee lacked authority "to inquire into the beliefs, associations, and activities of individuals connected with the press * * *" (*id.*, p. 1733). In discussing this contention with petitioner, a member of the Subcommittee stated: "A moment ago you stated that you didn't believe this committee had authority to inquire into your beliefs and into your conduct because it was investigating the press" (*id.*, p. 1736). A large number of the questions asked petitioner referred directly and on their face to Communist activities in the press (Gov. Ex. 8, pp. 1728–1732, 1739–1741, 1744–1745, 1754–1755).

Having been apprised of the subject under inquiry—and having himself shown his awareness of this subject—petitioner knew of the pertinency of the questions asked. At the very least, the pertinency of the questions concerning a Party cell in the New York Herald Tribune (Counts 3–7) [13] (J.A. 4–5) was patent. Cf. *Barenblatt* v. *United States, supra,* 360 U.S. at 125.

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[13] Contrary to petitioner's suggestion (Pet. 19–21), the court of appeals found that the questions in Counts 1 through 8—not merely in Count 8 alone—were "clearly pertinent" (Pet. App. A, p. 3a).

5. Finally, petitioner argues (Pet. 17–18) that the indictment was defective because of its failure to specify "the authority of the subcommittee (or the source of such authority),[14] what the question under inquiry was, and how the questions which were the subject of the indictment were pertinent to that question." Since the indictment here (J.A. 4–6) like that in *Russell* v. *United States*, No. 239, this Term, pending on petition for a writ of certiorari, simply charged the offense in the statutory terms, we respectfully refer the Court to our brief in opposition in that case (pp. 8–10). And since during petitioner's own testimony both he and the subcommittee made clear that they understood that Communist infiltration of the press was the subject under inquiry (see *supra*, pp. 17–18), he could not have been prejudiced by the lack of greater specificity.[15]

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[14] Petitioner is incorrect in his contention that the authority of the Subcommittee was not specified. The indictment states that the hearings were conducted "pursuant to * * * Senate Resolutions 366 of the 81st Congress and [its successor] 58 of the 84th Congress * * *" (J.A. 4).

[15] We submit that it is not necessary for the Court to withhold action on this petition until decision of the three contempt-of-Congress cases now pending on the merits: *McPhaul* v. *United States*, No. 33, this Term, certiorari granted, 362 U.S. 917; *Wilkinson* v. *United States*, No. 37, this Term, certiorari granted, 362 U.S. 926; *Braden* v. *United States*, No. 54, this Term, certiorari granted, 362 U.S. 960. One of the issues raised by petitioner—whether the indictment must specify the subject under inquiry—is also involved in *Braden*. But while we cannot, of course, know the reasons why the Court granted certiorari in that case, we believe that this issue is without substance, being controlled by clear, judicial precedent, and is distinctly subsidiary to the more serious issues involved in *Braden*. While this case, like the three pending cases, involves contentions as

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
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J. WALTER YEAGLEY,
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SEPTEMBER 1960.

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to the pertinency of the questions and the witness' rights under the First Amendment, determination of these issues, in view of this Court's holding in *Barenblatt* (see 360 U.S. at 123–124, 133–134), depends on the facts of each case.

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